

## REMARKS

Applicants respectfully request consideration of the subject application as amended herein. This Amendment is submitted in response to the Office Action mailed April 7, 2008. Claims 1-44 stand rejected. In this Amendment, claims 1, 17, 30, 33, 39 and 42 have been amended. No claims have been canceled. Claim 45 has been added. No new matter has been added.

### **35 U.S.C. §102**

The Examiner rejected claims 1-22, 24, 26-30, 32, 33, 35, 38, 39, 41, 43 and 44 under 35 U.S.C. §102(e) as being anticipated by Applicant Admitted Prior Art, (Background Invention, hereinafter “AAPA”), in view of Cusson, et al., (U.S. Patent No. 6,487,641, hereinafter “Cusson”).

Claim 1 has been amended to recite,

A new media identification system comprising:

at least one analysis module to receive a data stream from one or more of a plurality of sources, the data stream including data for a work, to generate a representation of the work from at least a portion of said data stream, and to transmit said representation;

at least one First Tier identification server to receive said representation, to determine whether said work from said representation is identifiable, to determine whether said representation is similar to a previously received unidentified representation if said work is not identifiable, and **to send said representation to at least one Second Tier identification server if said representation is similar to the previously received unidentified representation;** and

the at least one Second Tier identification server to identify said work from said representation.

(emphasis added).

Support for the amendments to the claims can be found, for example, on Figure 8, and page 27, columns 6-15 and page 22, lines 1-4 of the specification of the present invention.

Cusson discloses a queryable cache that contains a cache database that has a copy of a portion of data in a source database. (Cusson, col. 5, lines 44-48). When a query is received

from a web application in Cusson, it is first presented to the queryable cache. If the cache includes data specified in the query, a result is returned to the web application. If the cache does not include the data specified in the query, the queryable cache returns a miss, and the query is then made to the source database. (Cusson, col. 5, lines 50-60). Cusson discloses a cache miss accelerator that reduces the time and resources spent in determining that the data specified in the query is not in the cache. (Cusson, col. 12, lines 50-52). The cache miss accelerator includes a miss table having multiple entries, each of which represents a query made to a rowset of the cache. (Cusson, col. 12, lines 52-60). When a query is received, it is first compared to the miss table. If the query matches a miss table entry in the miss table, the cache is not searched for a match to the query. (Cusson, col. 12, lines 64-67). Instead, the query is sent directly to the source database. (Cusson, col. 13, lines 1-5). In Cusson, if queried data is not in the cache, the query is sent to the source database **regardless of whether or not the queried data is in the miss table**. In contrast, claim 1 has been amended to recite “to send said representation to at least one Second Tier identification server if said representation is similar to the previously received unidentified representation.” In claim 1, for example, if the representation is not similar to a previously received unidentified representation, the representation is not sent to the Second Tier identification server. The limitation, “to send said representation to at least one Second Tier identification server if said representation is similar to the previously received unidentified representation,” is not included in applicant admitted prior art. Accordingly, applicants respectfully submit that claim 1, and its associated dependent claims, is not anticipated by Cusson.

Claims 30 and 42 include the language, “if said representation is similar to the previously received unidentified representation, sending said received representation to a Second Tier Identification server for identification.” Claim 33 includes the language, “to send said

representation to said Tier N+1 server for identification if said representation is similar to one of said previously received unidentified representations.” Claim 39 includes the language, “means for sending said representation to a Second Tier Identification server for identification if said representation is similar to a previously received unidentified representation.” As noted above, Cusson fails to disclose such a limitation. Accordingly, the applicants respectfully assert that the present invention as claimed in claims 30, 33, 39 and 42, and their corresponding dependent claims, is patentable over the cited reference.

### **35 U.S.C. §103**

Claim 34 is rejected under 35 U.S.C. §103(a) as being unpatentable over AAPA, in view of Cusson, in further view of Official Notice. Claims 31, 36, 40 and 43 are rejected under 35 U.S.C. §103(a) as being unpatentable over AAPA, in view of Cusson and in further view of Ward, (U.S. Patent No. 6,526,411, hereinafter “Ward”). Claim 37 is rejected under 35 U.S.C. §103(a) as being unpatentable over AAPA, in view of Cusson and in further view of Ward.

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants’ silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

Applicant respectfully requests the withdrawal of the rejections under 35 U.S.C. §§102(b) and 103(a), and submits that the pending claims are in condition for allowance.

## **DEPOSIT ACCOUNT AUTHORIZATION**

Authorization is hereby given to charge our Deposit Account No. 022666 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such extension.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact the undersigned at (408) 720-8300.

Respectfully submitted,

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